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6 Attorney for Plaintiff

7 **UNITED STATES DISTRICT COURT**
8 **FOR THE**
9 **DISTRICT OF NEW JERSEY**

10 **COLT THURBER**

11 Plaintiff,

12 **v.**

13 **SPINNAKER RESORTS, INC.,**

14 Defendant.

15 **Case No.:**

16 **COMPLAINT AND DEMAND**
17 **FOR JURY TRIAL**

18 **(Unlawful Debt Collection Practices)**

19 **COMPLAINT**

20 COLT THURBER (“Plaintiff”), by and through his attorneys, KIMMEL &
21 SILVERMAN, P.C., alleges the following against SPINNAKER RESORTS, INC.
22 (“Defendant”):

23 **INTRODUCTION**

24 1. Plaintiff’s Complaint is based on the Telephone Consumer Protection Act
25 (“TCPA”), 47 U.S.C. § 227 *et seq.*

26 **JURISDICTION AND VENUE**

27 2. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331. See Mims v.
28 Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

29 3. Defendant conducts business in the Commonwealth of New Jersey and as such,
30 personal jurisdiction is established.

1 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

2 **PARTIES**

3 5. Plaintiff is a natural person residing in Toms River, New Jersey.

4 6. Plaintiff is a “person” as that term is defined by 47 U.S.C. § 153(39).

5 7. Defendant is a corporation that has its mailing address located at 35 DeAllyon
6 Avenue, Hilton Head Island, South Carolina, 29928.

7 8. Defendant is a “person” as that term is defined by 47 U.S.C. § 153(39).

8 9. Defendant acted through its agents, employees, officers, members, directors,
9 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.
10

11 **FACTUAL ALLEGATIONS**

12 10. Plaintiff has a cellular telephone number that he has had for over a year.

13 11. Plaintiff has only used this number as a cellular telephone number.

14 12. Beginning in or around July 2015, Defendant called Plaintiff on his cellular
15 telephone.

16 13. When contacting Plaintiff on his cellular telephone, Defendant used an automatic
17 telephone dialing system and automatic and/or pre-recorded messages.

18 14. Plaintiff knew that Defendant was using an automatic telephone dialing system
19 and/or pre-recorded messages as Defendant’s calls began with a pre-recorded message before a
20 live caller would come onto the phone.

21 15. Frustrated by the repeated calls, in or around July 2015, Plaintiff spoke with
22 Defendant and revoked any consent that may have previously been given to Defendant to call his
23 cellular telephone number.
24
25

1 16. Defendant proceeded to ignore Plaintiff's revocation and continued to call his
2 cellular telephone through September 2015.

3 17. After Defendant continued to call Plaintiff repeatedly on his cellular telephone,
4 Plaintiff was forced to block calls from Defendant's phone number.

5 18. Upon information and belief, Defendant conducts business in a manner which
6 violates the Telephone Consumer Protection Act.

7
8 **COUNT I**
9 **DEFENDANT VIOLATED THE**
10 **TELEPHONE CONSUMER PROTECTION ACT**

11 19. Plaintiff incorporates the forgoing paragraphs as though the same were set forth at
12 length herein.

13 20. Defendant initiated automated calls to Plaintiff using an automatic telephone
14 dialing system.

15 21. Defendant's calls to Plaintiff, in and after July 2015, were not made with
16 Plaintiff's prior expressed consent.

17 22. Defendant's calls to Plaintiff were not made for emergency purposes.

18 23. In addition, Defendant's acts as described above were done with malicious,
19 intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law
20 and with the purpose of harassing Plaintiff.

21 24. The acts and/or omissions of Defendant were done unfairly, unlawfully,
22 intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense,
23 legal justification or legal excuse.
24
25

CERTIFICATION PURSUANT TO L.CIV.R.11.2

I hereby certify pursuant to Local Civil Rule 11.2 that this matter in controversy is not subject to any other action pending in any court, arbitration or administrative proceeding.

Respectfully submitted,

Dated: July 5, 2017

BY: /s/ Amy L. Bennecoff Ginsburg, Esq.
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